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No. 02-1684

IN THE

Supreme Court of the United States

MICHAEL YARBOROUGH, WARDEN OF CALIFORNIA STATE PRISON—LOS ANGELES COUNTY,

Petitioner,

v.

MICHAEL ALVARADO,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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QUESTIONS PRESENTED

1) Whether a state court's objectively unreasonable refusal to extend clearly established federal law to a context in which that law should apply is an "unreasonable application of[] clearly established Federal law" under 28 U.S.C. § 2254(d)(1).

2) Whether the California Court of Appeals, in applying a "totality of the circumstances" test, unreasonably applied federal law in deciding that Respondent was "in custody" for *Miranda* purposes without considering, among other relevant circumstances, either the Respondent's known juvenile status or the use of the juvenile's parents to secure his presence for interrogation.

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit corporation with membership of more than 10,000 attorneys and 28,000 affiliate members in all 50 States.[1] The American Bar Association ("ABA") recognizes the NACDL as an affiliate organization and awards it full representation in the ABA's House of Delegates.

The NACDL was founded in 1958 to promote research in the field of criminal law, to disseminate and advance knowledge of the law in the area of criminal practice, and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases. Among the NACDL's objectives are to ensure the proper administration of justice and to ensure that criminal statutes are properly construed and applied.

STATEMENT OF THE CASE

Respondent Michael Alvarado was convicted by a California trial court of second degree murder and attempted robbery. Alvarado's co-defendant, Paul Soto, shot the victim in an attempt to steal a truck. The prosecution's primary evidence against Alvarado at trial were his own statements. An investigator elicited those statements during a two-hour interrogation at a police station, before which Alvarado was not given any *Miranda* warnings. At the time he gave the statements, Alvarado was only 17 years old. This fact was known to the investigator, who had used Alvarado's parents' authority over him to secure his presence at the interrogation.

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[1] Letters of consent have been filed with the Clerk. Pursuant to Rule 37.6, *amici curiae* state that no counsel for a party authored any part of this brief, and no person or entity, other than amici curiae, their members, and their counsel made a monetary contribution to the preparation or submission of this brief.

Mr. Soto shot the victim on September 23, 1995. Approximately a month after the shooting, a police investigator "left word" at Alvarado's house that she "needed to speak with him." J.A. 72. The investigator then contacted Alvarado's mother at her office. See *id.* Alvarado's parents agreed to bring him to the station. See *id.* Upon arriving at the station, Alvarado overheard an officer describe him as a "suspect." *Id.* at 189. Alvarado asked an officer whether someone "'should . . . be here with me' during the interrogation, but the officer did not respond. *Id.* at 185-86. As Alvarado was being escorted into the interrogation room, his parents asked to sit with Alvarado during the interrogation; they were told that they needed to "keep out." *Id.* at 186.

Alvarado was not given *Miranda* warnings before or during the interrogation. At the outset of the interrogation, the investigator stated that she had received "permission" from Alvarado's parents "to interview their son," but she did not indicate that she had obtained Alvarado's consent to be interrogated. J.A. 72-73. Alvarado also never stated during the interrogation that his participation was voluntary. J.A. 72-165. Nor did the investigator tell Alvarado that he was not under arrest. See *id.*

When first questioned about the events of September 23, 1995, Alvarado did not say anything about Soto's shooting. See J.A. 73-100. After hearing this account, the officer told Alvarado that she had "been told quite the opposite and we have witnesses that are saying quite the opposite." *Id.* at 101. She urged Alvarado to "be[] honest" and told him that "[y]ou got to make some very tough decisions here about being honest and taking care of yourself and what's going to happen to you." *Id.* at 105. Alvarado acquiesced to the officer's request and made statements that identified Soto as the shooter. See *id.* at 109-49. These statements were later used to implicate Alvarado as an aider and abettor. *Id.* at 338. Well after Alvarado started to make incriminating statements, the interrogator told him that he was free to use the phone and

that he could go home when he had finished. See J.A. at 149-50.

In California Superior Court, Alvarado moved to suppress his statements as the product of a custodial interrogation made without *Miranda* warnings. Alvarado argued that his status as a juvenile was one factor suggesting that he was in custody. See *id.* at 186, 188, 191. The Superior Court denied the motion to suppress without any indication that Alvarado's juvenile status affected the custody determination. The California Court of Appeals similarly failed to consider Alvarado's juvenile status as an objective circumstance affecting the custody determination. See Pet. App. C-17. The Court of Appeal's conclusion that "a reasonable person under the circumstances in which Alvarado was questioned would have felt free to leave" was made without any discussion of how the objective facts of Alvarado's juvenile status and the use of his parents to secure his presence affected the custody calculus. *Id.* Nor, for that matter, did the Court of Appeal address Alvarado's knowledge that he was a suspect, or the apparent refusal (through silence) of his request to have someone with him at the interrogation.

Alvarado's petition for a writ of habeas corpus was denied by the District Court for the Central District of California, and granted by the Ninth Circuit Court of Appeals. The Court of Appeals recognized that there was not a Supreme Court holding on all fours with Alvarado's case. Pet. App. A-6. The Court of Appeals concluded, however, that two lines of clearly established Supreme Court law applied to Alvarado's case: (1) this Court's longstanding recognition of the due process implications of juvenile status and (2) the clearly established requirement for a court making a custody determination to examine all the circumstances surrounding an interrogation. See *id.* at A-6-7. In light of those clearly established precedents, the Court of Appeals found that it would be objectively unreasonable for a state court to make a

custody determination while ignoring the circumstance of the suspect's juvenile status. *Id.* at A-23-24.

SUMMARY OF THE ARGUMENT

Section 2254(d)(1) of Title 28 of the United States Code provides that habeas review is available for state court decisions that are "contrary to, or involve[] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." Despite the statute's provision that review should be available for all "unreasonable application[s]" of federal law, Petitioner urges this Court to graft a new limitation onto the statute that would forbid federal habeas relief when a state court refuses to "extend" one of this Court's holdings to a context where it should apply, even if the state court's refusal to apply federal law in that context is objectively unreasonable. Petitioner bases this position on an overly narrow definition of "application" that renders the "unreasonable application" prong of § 2254(d)(1) virtually indistinguishable from the "contrary to" prong.

Petitioner's interpretation is at odds with the judgment of a plurality of this Court, the interpretation of eleven federal courts of appeal, and the language, structure, and intent of the statute. To adopt an interpretation that excluded so-called "failures to extend" from habeas review regardless of whether the state court's actions were objectively reasonable would subvert the statute's focus on the reasonableness of the state court's actions and drastically limit habeas review to the rare circumstances where a state court flatly contradicts an indistinguishable precedent of this Court.

In addition to Petitioner's misstatement of the function and interpretation of § 2254(d), Petitioner also follows the California Court of Appeal in fatally misapplying the standard for habeas review in its determination of whether Respondent was in custody. The state court misapplied this Court's

clearly established law governing the determination of custodial status of a suspect for *Miranda* purposes by failing to consider the age and experience of a suspect as an *objective* factor warranting consideration under this Court's "totality of the circumstances test." See *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995).

Petitioner attempts to evade this Court's long tradition of affording minors special consideration for due process purposes by labeling the Court's jurisprudence in this area a separate "context" analytically distinct from a determination of custodial status. In actuality, both custodial status and the special rights of juveniles in the custodial setting flow from the same basic concern of this Court expressed in *Miranda* that state coercion of individual suspects must be prevented. Moreover, Petitioner's restrictive interpretation of *Miranda* and its test for custodial status undermines the principles announced in that case and in subsequent decisions made by this Court. For these reasons, Petitioner's unduly narrow formulation of the "totality of the circumstances" test is clearly unreasonable, and the unreasonable application of this test by the California Court of Appeal was likewise an unreasonable application of clearly established Federal law under § 2254(d).

ARGUMENT

I. A STATE COURT'S OBJECTIVELY UNREASONABLE REFUSAL TO EXTEND A GOVERNING LEGAL PRINCIPLE IN A CONTEXT WHERE THAT PRINCIPLE PLAINLY APPLIES IS AN UNREASONABLE APPLICATION OF FEDERAL LAW UNDER 28 U.S.C. § 2254(d)(1).

A. A Plurality Of This Court And Several Courts Of Appeals Have Recognized That Objectively Unreasonable Failures To Extend Federal Law Are "Unreasonable Applications" Under Section 2254(d)(1).

Under 28 U.S.C. § 2254(d)(1), an application for a writ of habeas corpus may not be granted unless the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States."[2] The statute thus recognizes two categories of state court legal determinations that may be corrected on federal habeas review: decisions that are directly contrary to clearly established federal law; and decisions that otherwise unreasonably apply clearly established federal law. See *Williams* v. *Taylor*, 529 U.S. 362, 404-05 (2000). In other words, state court decisions that are not directly contrary to this court's holdings are to be judged under a rule of reasonableness; if the state court's decision was objectively unreasonable in light of then-current clearly established federal law, then a writ of habeas corpus may be granted.

In *Williams*, this Court held that a state court decision is an "unreasonable application" of federal law under § 2254(d)(1) when "the state court's application of clearly established federal law [i]s objectively unreasonable." 529 U.S. at 409. The Court held that the "unreasonable application" language

[2] Section 2254(d)(2) does not apply to this case.

"certainly" encompassed state court decisions "that correctly identif[y] the governing legal rule but appl[y] it unreasonably to the facts of a particular prisoner's case." *Id.* at 407-08. The Court further recognized that "unreasonable application" might also encompass "state-court decisions that unreasonably extend a legal principle from our precedent to a new context where it should not apply (or unreasonably refuse to extend a legal principle to a new context where it should apply)." *Id.* at 408. The Court did not resolve definitively the question of whether unreasonable refusals to extend a legal principle were "unreasonable application[s]." *Id.* at 408-09.

In *Ramdass* v. *Angelone*, a four-justice plurality of this court answered the question left open by *Williams*, recognizing that § 2254(d)(1) permits habeas relief to correct a state court's objectively unreasonable failure to extend an established legal principle to a context in which the principle should have applied. 530 U.S. 156, 166 (2000) (plurality). Ramdass argued that the rule of *Simmons* v. *South Carolina*, 512 U.S. 154 (1994), which entitled parole-ineligible defendants to an instruction on their parole ineligibility, should be extended to his case, where he was not yet parole-ineligible but was likely to become so. *Ramdass*, 530 U.S. at 163-64. The plurality agreed with Ramdass that refusals to extend clearly established federal law could be "unreasonable application[s]" under § 2254(d)(1), finding that "[a] state determination may be set aside under this [unreasonable application] standard if, under clearly established federal law, the state court was unreasonable in refusing to extend the governing legal principle to a context in which the principle should have controlled." *Id.* at 166. The plurality concluded, however, that the Virginia Supreme Court had not acted unreasonably in refusing to extend the *Simmons* rule to his situation. See *id.* at 169. Neither of the other two opinions in *Ramdass* questioned the plurality's recognition that

unreasonable refusals to extend clearly established federal law are unreasonable applications of federal law.

Indeed, eleven federal court of appeals have agreed with the *Ramdass* plurality that a state court's unreasonable refusal to extend clearly established federal law to a situation in which that law should apply would be an "unreasonable application" under § 2254(d)(1). See *Kibbe* v. *DuBois*, 269 F.3d 26, 36 (1st Cir. 2001), *cert. denied*, 535 U.S. 960 (2002); *Kennaugh* v. *Miller*, 289 F.3d 36, 45 & n.2 (2d Cir.), *cert. denied*, 537 U.S. 909 (2002); *Williams* v. *Price*, 343 F.3d 223, 229 (3d Cir. 2003); *Booth-El* v. *Nuth*, 288 F.3d 571, 575-76 (4th Cir.), *cert. denied*, 537 U.S. 959 (2002); *Penry* v. *Johnson*, 215 F.3d 504, 508 (5th Cir. 2000), *aff'd in part, rev'd in part*, 532 U.S. 782 (2001); *Patterson* v. *Haskins*, 316 F.3d 596, 603 (6th Cir. 2003); *Armstrong* v. *Bertrand*, 336 F.3d 620, 624 (7th Cir. 2003); *Carter* v. *Kemna*, 255 F.3d 589, 592 (8th Cir. 2001), *cert. denied*, 534 U.S. 1085 (2002); *Alvarado* v. *Hickman*, 316 F.3d 841, 853 (9th Cir. 2002); *Carter* v. *Ward*, 347 F.3d 860, 864 (10th Cir. 2003); *Hawkins* v. *Alabama*, 318 F.3d 1302, 1307 & n.3 (11th Cir. 2003).

Petitioner selectively quotes from the Eleventh Circuit's opinion in *Hawkins* to support its extreme position that a failure to extend a Supreme Court holding to an analogous context can never be an unreasonable application of federal law. See Petr's Br. 20. In fact, the Eleventh Circuit held that failures to extend could be unreasonable applications if "extend" meant:

> [T]o apply the *ratio decidendi* of Supreme Court decisions fully and completely (and not in some crabbed way) so that the rule of law covers new and different facts and circumstances as long as the new facts and circumstances – *objectively reasonably viewed* – are materially or . . . substantially the same that were in the mind of the Supreme Court when it laid down the rule.

318 F.3d at 1307 n.3 (emphasis added); see also *Bottoson* v. *Moore*, 234 F.3d 526, 531 (11th Cir. 2000) (again recognizing that refusals to extend can be unreasonable applications). The Eleventh Circuit's test, like those of other circuits, focuses on the objective reasonableness of the state court's failure to extend the law. A state court is not required to extend Supreme Court law to a new situation if the state court reasonably concludes that the situation before it presents "'substantially different circumstances' . . . [that] might make a difference on whether or not the Supreme Court's preexisting decisional principles laid down in one set of circumstances would apply to the new circumstances." *Hawkins*, 318 F.3d at 1307 n.3. If a fair application of those principles reasonably requires extension to a similar but distinct set of circumstances, however, then federal courts are nor precluded under § 2254(d)(1) from granting habeas relief.

B. By Its Terms, Section 2254(d)(1) Applies To Unreasonable Failures To Apply Federal Law In Contexts Where That Law Should Apply.

1. The Law That Is "Clearly Established" By This Court's Holdings Includes Both Specific Rules And Broader Constitutional Principles, Both Of Which Must Be Applied Reasonably By State Courts.

Petitioner maintains that the "'clearly established Federal law'" propounded by this Court's holdings is limited to a narrow class of precisely articulated rules, which do not govern a state court's determination of a constitutional issue unless the state court's decision is "irreconcilable" with that "limited, core set of rules." Petr's Br. 12. Petitioner further contends that "clearly established Federal law" by definition cannot be used in a "novel context." *Id.* This cramped definition of the "law" established by this Court both fails to appreciate the nature of much of this Court's jurisprudence and ignores the necessity for state courts to fairly apply

clearly established constitutional standards and principles, as well as specific constitutional rules.

This Court's constitutional holdings are not restricted to a "limited, core set of rules." Petr's Br. 12. Constitutional jurisprudence does encompasses precise rules designed to address specific situations, such as the rule that an officer with probable cause to suspect a civil traffic violation may make a traffic stop regardless of the officer's intent. See *Whren* v. *United States*, 517 U.S. 806 (1996). But constitutional jurisprudence is not limited to those precise rules; it also encompasses broader constitutional standards and principles that can apply in multiple contexts. See, *e.g.*, *Strickland* v. *Washington*, 466 U.S. 668 (1984); *Terry* v. *Ohio*, 392 U.S. 1 (1968). The "governing legal principle[s]" announced by the court are an essential part of constitutional jurisprudence. *Lockyer* v. *Andrade*, 123 S. Ct. 1166, 1175 (2003); cf. *Taylor* v. *Withrow*, 288 F.3d 846, 850 (6th Cir.) ("[C]learly established law under [§ 2254(d)(1)] encompasses more than just bright-line rules laid down by the Court. It also clearly includes legal principles and standards enunciated in the Court's decisions."), *cert. denied*, 537 U.S. 1007 (2002).

This Court recognized in *Andrade* that a broad "governing legal principle" is clearly established federal law, even for "a set of facts different for those of the case in which the principle was announced." 123 S. Ct. at 1175; see also *Wiggins* v. *Smith*, 123 S. Ct. 2527, 2535 (2003). The *Andrade* court treated the "gross disproportionality principle" as "clearly established law," even though the "precise contours" of the principle were unclear. 123 S. Ct. at 1173. Because the gross disproportionality principle "reserve[d] a constitutional violation for only the extraordinary case," under the facts of *Andrade* the California Court of Appeal did not act unreasonably by refusing to apply it to Andrade. *Id.* at 1175. The gross disproportionality principle was nonetheless

"clearly established law" that required at least the Court of Appeal's consideration.

A holding of this Court certainly will constitute clearly established law if it prescribes a rule to be applied to identical facts, but it will also constitute clearly established law as to cases presenting a different set of facts if "the force . . . [of] the precedent's underlying principle applies." *Wright* v. *West*, 505 U.S. 277, 304 (1992) (O'Connor, J., concurring). Limiting the definition of "clearly established federal law" to factually indistinguishable cases would eviscerate habeas review of state court rulings on any fact-specific standard that requires courts to apply general tests to evaluate the totality of the circumstances. Standards such as "reasonable suspicion," "probable cause," and "voluntariness" are necessarily applied in "novel contexts," but they are no less "clearly established law." See *Id.* at 309 (Kennedy, J., concurring).

2. Petitioner Distorts The Plain Language Of Section 2254(d)(1).

The keystone of Petitioner's argument that failures to extend federal law can never be unreasonable applications of federal law is its cramped definition of "application." Petitioner asserts, without citation, that "application" "presupposes the existence of commonly understood rules within a recognized and established context." Petr's Br. 19.

"Application," however, is not limited to the rote usage of a rule in a previously established context. To "apply," in a legal sense, is "to make use of as suitable, fitting, or relevant." *Webster's Third New International Dictionary* 105 (1993); see also 1 *The Oxford English Dictionary* 577 (2d ed. 1989) (defining "apply" as "[t]o bring (a law, rule, test, principle, etc.) into contact with facts, to bring to bear practically" and "[t]o have a practical bearing upon, a valid or suitable reference *to*."). "Applying" a precedent to a new case, therefore, does not imply that the precedent will match the case in all respects; "applying" rather implies that the

precedent is "suitable, fitting, or relevant" to a non-identical situation. Indeed, Petitioner's definition plainly contradicts much of first-year legal education's reliance on the case method.

Petitioner's reliance on the distinctions between "application" and "extension" misses the point. "Extension" and "application" are not synonyms, but they are also not mutually exclusive. "Extend" is a "[t]erm [that] lends itself to [a] great variety of meanings, which must in each case be gathered from context." *Black's Law Dictionary* 583 (6th ed. 1990). While in some senses "extend" can be used to describe an innovation or expansion, in other situations "extend" means "to stretch or pull out . . . *to its full size*." 5 *The Oxford English Dictionary* 594 (2d ed. 1989) (emphasis added). The failure to make an extension that represents an "expansion" of federal law will, in many situations, not be objectively unreasonable. The failure to extend precedent to a situation where the precedent reasonably must apply, however, would be an objectively unreasonable failure to apply the full import of the precedent. The question under § 2254(d)(1) is not a semantic determination of whether the state court decision was an "application" or an "extension"; it is a question of the objective reasonableness of the state court's decision.

Petitioner is correct that in some cases an extension of Supreme Court precedent to a new context will not be a necessary corollary to the original holding. In such cases, the objective reasonableness standard appropriately protects a state court's reasonable interpretation of governing law. See, *e.g.*, *Andrade*, 123 S. Ct. at 1173 (holding that state court did not act unreasonably for failing to apply gross disproportionality principle where Supreme Court precedent did "not establish[] a clear or consistent path for courts to follow").

Reasonably "applying" federal law requires more than a rote determination of whether this Court has ruled on the

precise facts in the present case. Applying federal law means "to bring" precedent "to bear" on the present facts, to determine whether current federal law has "a valid or suitable reference to" the present facts, and to determine whether the precedent is "suitable, fitting, or relevant" to decide the present case. This definition of "application" is consistent with this Court's recognition that "applying" law necessarily includes extending precedent to "'a set of facts different from those of the case in which the principle was announced.'" *Wiggins*, 123 S. Ct. at 2535; *Andrade*, 123 S. Ct. at 1175.

3. Petitioner's Interpretation Of Section 2254(D)(1) Also Distorts The Structure Of That Statute.

Petitioner's narrow reading of "application" also robs the "unreasonable application" prong of § 2254(d)(1) of any meaning independent from that of the "contrary to" prong. This Court has been "'reluctan[t] to interpret a statutory provision so as to render superfluous other provisions in the same enactment,'" *Freytag* v. *Commissioner*, 501 U.S. 868, 877 (1991), and has specifically held that the two prongs of § 2254(d)(1) have "independent meaning." *Williams*, 529 U.S. at 404. If "application" refers only to the use of "commonly understood rules within a recognized and established context," Petr's Br. 19, then it is difficult to imagine a situation in which a court could unreasonably apply those commonly understood rules within that recognized and established context without also acting "contrary to" those rules. For the "unreasonable application" language of § 2254(d)(1) to have independent effect, "application" must mean something more than a rote application of precedent to indistinguishable facts. See *Andrade*, 123 S. Ct. at 1175 ("Section 2254(d)(1) permits a federal court to grant habeas relief based on the application of a governing legal principle to a set of facts different from those of the case in which the principle was announced.").

4. This Court's *Teague* Jurisprudence Does Not Support Petitioner's Narrow Reading Of "Clearly Established Federal Law" Cases.

Petitioner attempts to find justification for its narrow reading of "clearly established federal law" in this court's retroactivity jurisprudence. Petitioner's reliance on *Teague* v. *Lane*, 489 U.S. 288, 301 (1989), and its progeny is misplaced for at least three reasons. First, although it is true that "whatever would qualify as an old rule under . . . *Teague* jurisprudence will constitute 'clearly established Federal law'" under § 2254(d)(1), *Williams*, 529 U.S. at 412, this court has never held that a constitutional principle *must* qualify as an old rule to constitute clearly established law. Indeed, this Court has commented that in some respects "the 'clearly established Federal law' phrase bears only a slight connection to our *Teague* jurisprudence." *Id.* Second, this Court has specifically rejected the Fourth Circuit's use of an "all reasonable jurists" test derived from *Teague* cases to make a § 2254(d)(1) reasonableness determination. *Id.* at 409-10.

Third, this Court has never held that an "old rule" for *Teague* purposes is limited to the narrow rulings of this Court and not the broader principles announced by this Court. *Teague* restricted the retroactive application of constitutional rules to those "dictated by precedent" at the time petitioner's conviction became final. 489 U.S. at 301 (emphasis omitted). This Court has recognized, however, that precedent could dictate an extension of principle to a new situation if the state court "would have felt compelled by existing precedent to conclude that the rule [the petitioner] seeks was required by the Constitution." *Saffle* v. *Parks*, 494 U.S. 484, 488 (1990); see *Stringer* v. *Black*, 503 U.S. 222, 229 (1992). In *Stringer*, this court recognized that extending the holding of *Godfrey* v. *Georgia*, 446 U.S. 420 (1980), as to a Georgia capital sentencing scheme to a differently structured Mississippi sentencing scheme was nonetheless dictated by the principles

underlying *Godfrey*. In *Stringer* clear differences existed between the Mississippi and Georgia sentencing systems; however, "those differences could not have been considered a basis for denying relief in light of [then-existing] precedent." *Stringer*, 503 U.S. at 229.

5. A State Court's Decisions On Whether Or Not To Extend A Constitutional Principle To A New Context Should Be Viewed Under An Objective Rule Of Reasonableness.

Decisions by a state court to extend or not to extend a constitutional principle to a new situation should be judged in the same way that other "unreasonable applications" of federal law are judged, by whether the state court's decision was objectively reasonable. By permitting federal habeas review of "unreasonable application[s]" of federal law, Congress established that the central question for the second prong of § 2254(d)(1) is the reasonableness of the state court's decision.

Petitioner asks this court to depart from this rule of reasonableness in situations where the state court extended or failed to extend a constitutional principle to a new context. Petitioner's claim that the statute forbids habeas review of any "extensions" would require federal courts to engage in an "extension" analysis to determine whether a state court's unreasonable application of a statute was a "failure to extend." Indeed, Petitioner recognizes that his interpretation will require "[c]areful scrutiny of purported 'applications' . . . to avoid hidden 'extensions' of law." Petr's Br. 21. Requiring federal courts to engage in the complicated semantics of distinguishing an "application" from an "extension" would distract reviewing courts from the inquiry mandated by the statute: whether the state court acted unreasonably in light of clearly established Supreme Court law.

Petitioner also recognizes that its reading of § 2254(d)(1) would eliminate any habeas review of state court decisions that are not, in its unusual parlance, "egregiously indefensible." *Id.* at 10. Under petitioner's interpretation, state courts would be required to comply only "with a limited, core set of rules" directly derived from the precise holdings of this Court. *Id.* at 12. To reasonably apply this Court's holdings, however, state courts must show "conceptual faithfulness" to those holdings, not merely a "decisional obedience." *Desist* v. *United States*, 394 U.S. 244, 277 (1969) (Fortas, J., dissenting). Such a "conceptual faithfulness" would not require state courts to predict the future development of the law or to extend Supreme Court holdings to areas where they reasonably might not apply. It simply requires state courts to fairly and reasonably apply not only the precise specifics of this Court's decisions in factual circumstances that are entirely similar, but also the reasoning and the implications of those decisions to circumstances that may be distinct, but are not entirely novel.

Moreover, Petitioner's assertion that state courts need only comply with a "limited, core set of rules" is no more helpful than its suggestion that state court decisions must be upheld unless they are "egregiously indefensible." Petitioner's persistent reference to a "limited, core set of rules" evokes an undefined conception of a hierarchy of constitutional principles. But there is no suggestion in this Court's jurisprudence that "clearly established Federal law" involves only a "core" or "subset" of this Court's rulings. Similarly, there is nothing in this Court's jurisprudence to suggest that "established law" becomes "clear" only after repeated rulings. If Petitioner meant instead to say that only the particular holding *within* a decision of this Court may be applied to other cases, then the phrase "limited, core set of rulings" says nothing other than to repeat the simple rule that only the holding of this Court stands of precedent.

State courts need not extend federal law "presciently," but they should "reasonably" consider the implications of federal law and extend it to situations where it should apply. *O'Dell* v. *Netherland*, 521 U.S. 151, 166 (1997). Section 2254(d)(1) makes clear that federal courts are to respect a state court's reasonable resolution of a contested constitutional issue. It is equally clear, however, that a state court must reasonably apply this Court's interpretation of the Constitution. A state court may not ignore this Court's articulation of a constitutional principle merely because this Court has not articulated a bright-line rule. "[C]onceptual faithfulness" to constitutional principles requires more. *Desist*, 394 U.S. at 277 (Fortas, J., dissenting).

Section 2254(d) is not a license for state courts to myopically ignore the full implications of federal law. In a federal system, state courts should be expected to conscientiously apply the Court's decisions to their full extent and to extend those precedents to new situations if "the precedent's underlying principle applies" in the new situation. *Wright*, 505 U.S. at 304 (O'Connor, J., concurring). When the state court's decision not to extend those precedents is objectively unreasonable, § 2254(d)(1) allows habeas relief.

II. THE CALIFORNIA COURT OF APPEALS MISAPPLIED CLEARLY ESTABLISHED LAW BY FAILING TO CONSIDER THE AGE AND EXPERIENCE OF A SUSPECT AS A FACTOR RELEVANT TO CUSTODIAL STATUS.

This case presents a clear example of the appropriate function of an "application" analysis by a court reviewing a habeas petition under § 2254(d)(1). The state court misapplied the "totality of the circumstances" test used to determine the custodial status of a suspect by failing to consider the special considerations afforded juveniles in all other aspects of *Miranda* jurisprudence to the custody calculus. The Court of Appeals properly recognized in its habeas review that the failure to extend clearly established

constitutional considerations of a particular circumstance (in this case, the status of the suspect as a juvenile) into a test mandating consideration of all relevant circumstances necessarily implied that the state court applied the test in an unreasonable manner.

Petitioner now asks this Court to condone the California Court of Appeal's oversight. Petitioner argues strenuously that age is not a relevant circumstance for consideration of custodial status, and that the special procedural safeguards afforded minors do not apply in the context of custodial status. See Petr's Br. 26-28. Both arguments are fatally defective: the former because it confuses an objective consideration of the age of the suspect, which is appropriate for a full and total understanding of the circumstances surrounding an interrogation, with an idiosyncratic analysis of an individual juvenile's state of mind; the latter because it fails to apprehend the common concerns informing both a determination of voluntariness and a determination of custodial status.

Whether reached through "application" or "extension," the inescapable truth remains that the California Court of Appeal's failure to consider the status of Michael Alvarado as a juvenile in its determination of "custody" for *Miranda* purposes was manifestly unreasonable in light of this Court's precedent. Petitioner's argument must therefore be rejected, and the Court of Appeals' decision affirmed.

A. Clearly Established Law Under *Miranda*.

This Court established in *Andrade* that, "[a]s a threshold matter" for habeas claims reviewed under § 2254(d), it must "first decide what constitutes 'clearly established Federal law, as determined by the Supreme Court of the United States." *Andrade*, 123 S.Ct. at 1172 (quoting § 2254(d)(1)). In this case, all "clearly established Federal law" flows from this Court's decision in *Miranda* v. *Arizona*, 384 U.S. 436 (1966). *Miranda* declared unconstitutional the use of statements

obtained from defendants during custodial interrogations where those defendants were not informed of their constitutional rights. *Id.* at 444.[3]

The purpose of the *Miranda* requirements is to ensure that a base line of protection is established for *all* suspects subjected to a minimal threshold of coercion by the government. Otherwise, "no statement obtained from the defendant [could] truly be the product of his free choice." *Id.* at 458. This threshold was set at the level of custody because "without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Id.* at 467.

The *Miranda* Court eschewed a formalistic approach to custodial determinations. It defined "custodial interrogation" to mean "questioning initiated by law enforcement officers after a person has been taken into custody *or otherwise deprived of his freedom of action in any significant way*." *Id.* at 444 (emphasis added). This broad mandate is consistent with the purpose of *Miranda* to eliminate avenues for state-sanctioned coercion. See *Berkemer* v. *McCarty*, 468 U.S. 420, 433 (1984).

Subsequent decisions by this Court have established that "the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury* v. *California*, 511 U.S. 318, 323 (1994). To assist in this objective determination of custodial status, this Court has articulated a clear, straightforward test :

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[3] The rights afforded a suspect under custodial interrogation include "a right to remain silent, that any statement he does make may be used as evidence against him; and that he has a right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444.

> Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.

Keohane, 516 U.S. at 112 (footnote omitted).

Any fact necessary to set the scene of the interrogation should be considered in the "totality" analysis. *Id.* at 112 Properly applied, the test allows a court to reach the 'ultimate inquiry as to whether there was a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.'" *Id.* at 112. Where the test is not applied properly, however, the determination of "custody" is skewed, and the possibility of coercion affecting the suspect's decision to confess is heightened.

B. The Age Of A Suspect Is An Important Factor In Determining Whether The Conduct Of The Government Is Objectively Coercive.

The Ninth Circuit's decision proceeds from the unremarkable observation that the age of a suspect might actually bear some relation to the overall coercive effect of a quasi-custodial situation. Pet. App. A-2. According to Petitioner, however, this Court should hold not only that the connection between age and coerciveness is not obvious, but that the connection does not exist at all. Petr's Br. 29-40. This argument defies both common sense and the vast majority of precedent on the subject, and places at risk the very values the *Miranda* warnings were crafted to protect.

It is impossible to determine whether the conduct of the police is coercive in an objective sense without understanding the context of that conduct. "[W]hat constitutes a restraint on liberty prompting a person to conclude that he is not free to 'leave' will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs." *Michigan* v. *Chestermut*, 486 U.S. 567, 573 (1988)

(discussing test for determination of "seizure" under the Fourth Amendment). For example, a police officer who tells every suspect he interrogates that the suspect can leave at any time but refuses to open the door to the interview room for the suspect would not be viewed ordinarily as engaging in custodial interrogation, but a reasonable person observing the proceedings might perceive things differently if the suspect was a paraplegic who *could not* leave the room without the assistance of the interrogating officer.[4] The necessarily fact-specific nature of custody determinations led the Court in *Berkemer* to reject bright line rules for custodial status, and to apply the totality of the circumstances test in *Keohane*. See *Berkemer*, 468 U.S. at 441-42; *Keohane*, 516 U.S. at 112.

The special vulnerabilities attendant to youth are well-known to this Court. "Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult." *Thompson* v. *Oklahoma*, 487 U.S. 815, 835 (1988). Add to this list the smaller physical dimensions of minors, the lack of independent finances or mobility, and the dependence on set authority figures for shelter and guidance, and the ordinary minor emerges as a very frail suspect indeed. These frailties are not lost on government interrogators, who are 'acutely aware of the potentially incriminatory nature of the disclosures sought,' *Minnesota* v. *Murphy*, 465 U.S. 420, 429-30 (1984), and can readily use a youth's inexperience, physical and emotional

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[4] In a similar vein, an adult taken to a police station by a friend would not reasonably interpret the absence of that friend in the interrogation as a coercive act. A *minor*, on the other hand, would undoubtedly associate an officer's assertion of authority over his parents with an assertion of authority over himself, not (only) because of his personal state of mind, but because he is *actually* subject to the authority of his parents. No reasonable person, juvenile or otherwise, would believe he was free to terminate an interrogation where his own authority figures were not free to do the same.

limitations, and dependence on parental figures for support to confine a juvenile through techniques that would not work against an adult.[5]

This Court has long acknowledged the special vulnerabilities of juveniles in the context of custodial interrogations, cautioning that 'admissions and confessions of juveniles require special attention.' *In re Gault*, 387 U.S. 1, 45 (1967), *quoted in* Pet. App. A-15; *accord Gallegos* v. *Colorado*, 370 U.S. 49, 54 (1962). In *Haley* v. *Ohio*, 332 U.S. 596 (1948), this Court overturned a conviction for murder premised on the alleged "confession" of a 15 year-old African-American boy. *Haley*, 332 U.S. at 601. The Court specifically noted the "tender and difficult age" of the defendant as a factor in its determination that the defendant's confession was coerced. *Id.* at 599. In the case of *In re Gault*, this Court emphasized that "[w]ith respect to juveniles, both common observation and expert opinion emphasize that the 'distrust to confessions made in certain situations' . . . is imperative in the case of children from an early age through adolescence." 387 U.S. at 48. More recent decisions by this Court only confirm the need for special attention to juvenile confessions in general due to the unique characteristics of minors as a group. See, *e.g.*, *Withrow* v. *Williams*, 507 U.S. 680, 693 (1993), *Fare* v. *Michael C.*, 442 U.S. 707, 725-27 (1979).[6]

[5] The instant case provides a good example of just such abuse by the police. Michael Alvarado was driven to the station house by his parents without ever agreeing to go there himself. Once at the station house, he was not allowed access to them during the course of his interrogation. J.A. 72-73, 185-86. Moreover, the interrogating officer in the case did not bother to tell Alvarado he was free to go until *after* he made several inculpatory statements. *Id.* 149-50. From the start of his interrogation to the point of his confession, Alvarado had no way of leaving the station without the assistance of the police and was given no indication that he would receive such assistance upon request.

[6] Age matters outside the confines of *Miranda* as well. As the Supreme Court noted in *Goss* v. *Lopez*, 419 U.S. 565 (1975), age plays a role "in

Bereft of any response to the weight of this Court's precedent mandating special consideration for the age of a suspect in the context of juvenile interrogations, Petitioner instead mischaracterizes the Ninth Circuit's position as a "subjective" inquiry into the "state of mind" of an 'unreasonable' juvenile. See Petr's Br. 36-39. Yet, the language of *Alvarado* itself describes the Ninth Circuit's approach as a "modified" objective test akin to the test employed by the Tenth Circuit in *Erving L.* See Pet. App. A-14. In that case, the Tenth Circuit explicitly *refused* to consider the *subjective* impressions of a juvenile in determining the custodial status of a minor. See *United States* v. *Erving L.*, 147 F.3d 1240, 1248 (10th Cir. 1998). Instead, the Tenth Circuit advocated a "reasonable juvenile" standard that would look to see whether a reasonable person of the suspect's age and experience would feel free to terminate the interrogation. See *id.* The age of the suspect would be relevant, the court held, to the extent that "the officers were aware of [the suspect's] particular traits *and* those traits influenced the actions of the officers." *Id.*

The Tenth Circuit's decision in *Erving L.* underscores the difference between the objective consideration of a suspect's age and the type of subjective inquiry used for voluntariness and waiver determinations. In terms of voluntariness or waiver, the age of the suspect is used as a proxy to determine the ability of the *individual* to resist the coercive practices of

contracts, in torts, in criminal law and procedure, in criminal sanctions and rehabilitation, and in the right to vote and to hold office." *Id.* at 590-91. Juveniles below the age of sixteen are immunized from the death penalty, see generally *Thompson* v. *Oklahoma*, 487 U.S. 815 (1988), and children are insulated from the type of vulgar and lewd speech usually protected by the First Amendment. *See, e.g., Bethel Sch. Dist. No. 403* v. *Fraser*, 478 U.S. 675 (1986) (allowing restrictions on student speech that is vulgar or lewd because of the sensitive nature of young students), *FCC* v. *Pacifica Found.*, 438 U.S. 726 (1978) (permitting federal agency to regulate conduct of speech at certain times when children are likely to hear the speech).

the government. In contrast, age is an important consideration in the context of custodial status because it informs an objective determination of the behavior of the *government*. Compare *Dickerson* v. *United States*, 530 U.S. 428, 434 (2000) ("The due process test takes into consideration 'the totality of all the surrounding circumstances – both the characteristics of the accused and the details of the interrogation.'"), with *Keohane*, 516 U.S. at 112 (considering only "the circumstances surrounding the interrogation"). It helps the objective viewer to "set the scene" by placing the conduct of the government within a larger context.

The state of mind of a suspect is unquestionably a subjective inquiry reserved soleley for a voluntariness or waiver inquiry. But the age of a suspect is also a type of frailty that, *if known* by the police, is relevant to the objective determination as to whether the conduct of the police deprived the suspect of her freedom to leave. See *Erving L.*, 147 F.3d at 1248. This Court explained the difference between a purely subjective factor and a subjective characteristic that objectively affects the circumstances of the proceedings in its discussion of the subjective intent of interrogating officers in *Stansbury*. There, the Court held that the an interrogating officer's subjective views as to whether the individual was a suspect did not matter in a custody determination "save as they are communicated [to the suspect] or otherwise manifested." *Stansbury*, 511 U.S. at 324 (citation omitted) The Court's point here can hardly be missed: where a peculiar circumstance of the individual is injected into the interrogation by the officer (whether by word or action), that circumstance bears upon the custody determination. *Id.* at 325.

A reviewing court simply *cannot* judge the conduct of an interrogating officer without considering all the salient facts relating to the subject of that conduct. The custody inquiry may not 'place upon the police the burden of anticipating the

frailties or idiosyncrasies of every person whom they encounter,' *Berkemer*, 468 U.S. at 442 n.35, but neither does it sanction the abuse of those frailties or idiosyncrasies by the government. The Ninth Circuit properly recognized this self-evident proposition, and on that basis granted Mr. Alvarado's petition for habeas. This Court should do no less; accordingly, the decision of the Ninth Circuit should be affirmed.

C. It Is UnreasonableTo Use A "Reasonable Person" Standard That Does Not Consider The Age Of A Suspect Under This The Clearly Established Due Process Law Of This Court.

Petitioner argues that the Ninth Circuit "improperly applied § 2254(d)(1) by requiring the state court to extrapolate Supreme Court precedent from the voluntariness context to a 'custody' determination in a way this Court has never done." Petr's Br. 24. Consistent with Petitioner's professed view that failures to "extend" clearly established precedent can *never* be declared unreasonable, Petitioner assails the Ninth Circuit's consideration of Michael Alvarado's age as an "engraft[ing]" of law from another "context." *Id.* at 26. In actuality, it is Petitioner who, like the California Court of Appeals before him, misapplies the clearly-established law of this Court through Petitioner's unduly restrictive interpretation of this Court's due process jurisprudence. As this Court noted in *Thompson*:

> "We must never hesitate to apply old values to new circumstances. . . . The important thing, the ultimate consideration, is the constitutional freedom that is given into our keeping. A judge who refuses to see new threats to an established constitutional value, and hence provides a crabbed interpretation that robs a provision of its full, fair and reasonable meaning, fails his judicial duty."

Thompson, 487 U.S. at 821 n.4 (quoting *Ollman* v. *Evans*, 750 F.2d 970, 995-96 (1984) (en banc) (Bork, J., concurring)).

In this case, Petitioner's crabbed interpretation of *Miranda* threatens to eviscerate the principles of that decision where juveniles are concerned by transforming the "reasonable person" standard of *Keohane* into what amounts to a "reasonable adult" standard precluded from considering the relevant circumstance of a suspect's age and experience. This Court has criticized similar "divide-and-conquer" analyses in the past. See *United States* v. *Arvizu*, 534 U.S. 266, 275 (2002) (refusing to separate out individual facts from totality of the circumstance analysis for Fourth Amendment purposes). Petitioner's standard contradicts the princples underlying both *Miranda* and *Keohane*, ignores applicable federal and state case law, and would lead to manifest inequities in the way juveniles in this country are treated by interrogating officers. It would read the "reason" right out of the "reasonable person" standard, and therefore should be rejected by this Court.

The custodial inquiry of *Miranda* is not so attenuated from the voluntariness inquiry as Petitioner would have this Court believe. *Miranda* was concerned with the inherent coerciveness of custodial interrogation, and its warnings were established to remove the heightened risk of coercion in this environment. See *Miranda*, 384 U.S. at 455, *Dickerson*, 530 U.S. at 435. By the same token, this Court's voluntariness jurisprudence is necessarily rooted in considerations of coerciveness. For Petitioner to suggest that the special vulnerabilities of minors noted by this Court in the context of voluntariness have no bearing whatsoever as to whether an interrogation of a juvenile "exerts upon [him] pressures that sufficiently impair his free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights" strains credulity. *Berkemer*, 468 U.S. at 437.

Petitioner's rigid construction of this Court's due process jurisprudence contravenes "[t]he purposes of the safeguards prescribed by *Miranda* . . . to ensure that the police do not coerce or trick captive suspects into confessing . . . and as much as possible to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary." *Berkemer*, 468 U.S. at 433. Petitioner's approach would actually *increase* the risk that vulnerable youths may be "coerce[d] or trick[ed]" by forcing courts to turn a blind eye to the abuse of a minor's vulnerabilities by interrogating officers.

Moreover, the "reasonable adult" standard advocated by Petitioner would only increase the number of voluntariness and waiver claims brought before the courts. Even the Solicitor General concedes that children who might be protected by *Miranda* under a "reasonable juvenile" standard would be forced to bring a voluntariness action instead under the absolute "reasonable adult" standard advocated by Petitioner and the Solicitor General. Brief for the United States as *Amicus Curiae* Supporting Petitioner (hereinafter the "S.G. Brief") 11-14. Petitioner decries the supposed duality of *Miranda* standards for adults and juveniles under the Ninth Circuit's approach, yet it is Petitioner's formalistic "reasonable adult" standard that would force children back to the pre-*Miranda* standards of voluntariness and waiver rather than afford them protection substantively equivalent to that of adults. Such an approach is neither efficient nor fair; it is also obviously at odds with the precedent of this Court.

In addition to contradicting the general principles of *Miranda*, Petitioner's approach does not even fulfill the limited purpose of the 'reasonable person' test itself. "The test's objective standard – looking to the reasonable man's interpretation of the conduct in question – allows the police to determine in advance whether the conduct contemplated will implicate the [Fifth] Amendment." *Chesternut*, 486 U.S. at 574 (explaining the purpose of the test in the similar context

of seizure determinations under the Fourth Amendment). "This 'reasonable person' standard also ensures that the scope of the [Fifth] Amendment protection does not vary with the state of mind of the particular individual being approached." *Id.* at 574.

Neither of these purposes is served by Petitioner's imposition of an inflexible "reasonable adult" standard. The first goal, "to allow the police to determine in advance whether the conduct contemplated" violated the suspect's due process rights cannot be met through rote practice, but rather requires independent analysis by individual interrogators as to all the circumstances surrounding their interrogations. See *Berkemer*, 468 U.S. at 441 (refusing to apply a bright-line test for custody determinations). In this context, forcing interrogators to guess whether the factual circumstances before them *would* be coercive were the suspect an adult instead of a child complicates rather than simplifies the fact-specific determination required of the interrogator.[7]

Petitioner fails miserably to fulfill the second goal of the "reasonable person" test as well. Subjecting children to the same amount of interrogation as an adult does not ensure that the scope of the *Miranda* protection remains invariant regardless of the state of mind of the particular individual being approached; to the contrary, it *guarantees* that all minors could be subjected to intentionally and objectively coercive tactics that would not be coercive against adults.

Moreover, the decision of the California Court of Appeals did not occur in a vacuum. As the Ninth Circuit noted, no

[7] Petitioner repeatedly expresses concern that law enforcement will suddenly be required to warn *all* juveniles of their constitutional rights at *all* times. This concern overlooks the obvious restriction of the objective test: specifically, that the age of a suspect would only become a factor in the "totality" inquiry where the age of the suspect was subjectively known or objectively knowable by the officers, *and* where the officers used that knowledge against the youth.

less than twenty-four state jurisdictions[8] (not to mention the Tenth Circuit Court of Appeals[9] and at least two federal district courts[10]) consider the age of a suspect in determining custodial status. These courts recognize that which Petitioner tries so hard to obfuscate – that voluntariness and custodial status are not two separate "contexts," but rather separate permutations of a shared due process principle.

Given the long body of precedent by this Court affirming the special needs of juveniles for custody purposes, the overwhelming weight of authority in other federal and state courts, and the incontrovertible logic behind the Court of Appeal's position, the California Court of Appeals cannot be said to have reasonably overlooked the factors of age and experience in rendering its decision as to the custodial status of Michael Alvarado. All Michael Alvarado wanted, and all

[8] *See, e.g.*, *People* v. *J.C.*, 844 P.2d 1185, 1189-90 (Colo. 1993) (noting that "the age and experience of the juvenile should weight heavily in a consideration of the circumstances' of a confession.") (internal quotation marks omitted) (quoting *Taylor* v. *United States*, 380 A.2d 989, 992 n.6 (D.C. 1977); *People* v. *Fasse*, 528 N.E.2d 1049, 1052 (Ill. App. Ct. 1988) ("Factors to be considered [for purposes of custody determination] include . . . the age and intelligence of the suspect."); *In re Owen F.*, 523 A.2d 627, 630 (Md. Ct. Spec. App. 1987) (applying 'a wider definition of custody for *Miranda* purposes' where the case concerns a juvenile) (quoting *In re Lucas F.*, 510 A.2d 270, 273 (Md. 1986)); *In re V.P.*, 55 S.W.3d 25, 31 (Tex. Crim. App. 2001) ("In determining whether a minor was in custody at the time of questioning, courts consider the age of the defendant and all the circumstances surrounding the interrogation to decide whether there was a formal arrest or a restraint of movement to the degree associated with formal arrest."); *In re Ojore F.*, 673 N.Y.S.2d 993, 996 (Kings County Fam. Ct. 1998) (holding that "special care must be taken" when determining the custodial status of juvenile suspects).

[9] *See United States* v. *Erving L.*, 147 F.3d 1240 (10th Cir. 1998).

[10] *See, e.g.*, *United States ex rel. Argo* v. *Platt*, 673 F. Supp. 282, 289 & n.12 (N.D. Ill. 1987) (applying 'refined objective approach' considering a child's age and intelligence); *United States* v. *Zahrey*, 963 F. Supp. 1273, 1278 (E.D.N.Y. 1997) (citing *United States* v. *Ruggles*, 70 F.3d 262, 264-65 (2d Cir. 1995)).

the Court of Appeals delivered, was a reasoned opinion considering two interrelated strands of due process law – custodial status and procedural safeguards for children – in light of each other. This Court should not allow state courts to ignore the clear impart of its precedent, not to mention good sense, in making constitutional adjudications. To do otherwise would be to ratify abuse of the habeas process by state courts like the California Court of Appeals. Accordingly, this Court should reject Petitioner's request for reversal, and instead affirm the decision of the Court of Appeals.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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